

United States District Court

MIDDLE

DISTRICT OF

ALABAMA

In the matter of the Search of

(Name, address or brief description of person, property or premises to be searched)

APPLICATION AND AFFIDAVIT FOR SEARCH WARRANT

Booth "C-36" at the Lee County Flea Market, Inc.,
U.S. Highway 280 and Lee County Road 379,
Smiths Station, Alabama

CASE NUMBER:

3:05mj 127-1114

I David Henderson being duly sworn depose and say:

I am an agent with Bureau of Immigration and Customs Enforcement and have reason to believe

that ☐ on the person of or ☒ on the property or premises known as (name, description and/or location)

Booth "C-36" at the Lee County Flea Market, Inc., U.S. Highway 280 and Lee County Road 379, Smiths Station, Alabama,

in the Middle District of Alabama

there is now concealed a certain person or property, namely (describe the person or property to be seized)

See Attachment A

which is (state one or more bases for search set forth under Rule 41(b) of the Federal Rules of Criminal Procedure)

property that constitutes evidence of the commission of a criminal offense,

concerning a violation of Title 18 United States Code, Section(s) 2318

The facts to support the issuance of a Search Warrant are as follows:

See Attached Affidavit

Continued on the attached sheet and made a part hereof: ☒ Yes ☐ No


Signature of Affiant

Sworn to before me and subscribed in my presence,

October 14, 2005

at Montgomery, Alabama

Date

City and State

VANZETTA P. MCPHERSON

United States Magistrate Judge

Name & Title of Judicial Officer


Signature of Judicial Officer

ATTACHMENT "A"
PROPERTY TO BE SEIZED

1. All counterfeit movie Digital Video Disks (DVDs), tapes (VHS), music Compact Disks (CDs) along with any items used for storage and/or display of counterfeit goods.
2. Tapes, cassettes, cartridges, streaming tape, commercial software and hardware, computer disks, disk drives, monitors, computer printers, modems, tape drives, disk application programs, data disks, system disk operating systems, magnetic media floppy disks, CD-ROMs, CD-RWs, CD-Rs, DVDs, DVD-Rs, DVD burners, hardware and software operating manuals, tape systems and hard drive and other computer related operation equipment, digital cameras, scanners, televisions, DVD players and any equipment that may be or are used to manufacture or distribute counterfeit goods including movie DVDs, VHS tapes and music CDs.
3. Correspondence pertaining to the possession, receipt, manufacture or distribution of counterfeit goods.
4. Books, ledgers and records bearing on the production, reproduction, receipt, shipment, orders requests, trades, purchases or transactions of any kind involving counterfeit goods.
5. Address books, mailing lists, supplier lists, mailing address labels and any and all documents and records pertaining to the preparation, purchase and acquisition of names or lists of names to be used in connection with the purchase, sale, trade or transmission of any counterfeit goods.
6. Diaries, notebooks, notes and other records reflecting personal contact and other activities with individuals engaged in the possession, production or distribution of counterfeit goods.
7. Records evidencing occupancy or ownership of the listed booths and/or tables.
8. Records or other items which evidence ownership or use of computer equipment found at the listed booths and/or tables, including, but not limited to, sales receipts, bills, handwritten notes and handwritten notes in computer manuals.

AFFIDAVIT

I, David E. Henderson, being duly sworn, depose and state:

I am a Special Agent with the Department of Homeland Security, United States Immigration and Customs Enforcement (ICE), presently assigned to the Office of the Resident Agent in Charge, Mobile, Alabama (RAC/Mobile) stationed in Montgomery, Alabama. I have been employed as an ICE Special Agent for approximately five years. As part of my daily duties as an ICE agent, I investigate criminal violations relating to violations of 18 U.S.C. §§ 545, 18 U.S.C. §§ 2318, 18 U.S.C. §§ 2320 and empowered to enforce all federal laws. As part of a continuing investigation concerning counterfeit items, I have conducted undercover operations concerning the alleged illegal importation and trafficking in counterfeit goods in the Middle District of Alabama.

During June 2005, I received information from the Lee County Sheriff's Department that several individuals were selling alleged counterfeit movie digital video disks (DVDs) at the Lee County Flea Market Inc. located on U.S. Highway 280 south in Smiths Station, Alabama.

The Lee County Flea Market Inc. is an outdoor market located at the northeast corner of the intersection of U.S. Highway 280 and Lee County Road 379 in Smiths Station, Alabama. The market is identified by a blue and white sign located off of U.S. Highway 280 that bears the name "Lee County Flea Market" and the telephone number "291-7780". The flea market is described as an unpaved dirt and grass lot with a "U" shaped wooden structure located on the premises. The "U" shaped wooden structure bears a number of alphanumeric symbols that are used to identify specific

booths or vendors (Example: A-1, B-5, C-24, etc.). Vendors selling goods at the Lee County Flea Market, Inc. either utilize the identifiable booths at the "U" shaped wooden structure or may set up booths/tables throughout the surrounding area. Vendors that set up outside the "U" shaped structure do not have labels or marks to identify their specific booths/tables.

On July 24, 2005, Lee County Sheriff's Deputy Eric McCain purchased three movie DVDs from a vendor operating a booth labeled as "B-1" at the Lee County Flea Market. The three movie DVDs were subsequently examined by James Duff, a field investigator for the Anti-Piracy Office (APO) of the Motion Picture Association of America (MPAA), who stated the items were in fact counterfeit.

On July 30, 2005, Deputy McCain and I purchased a total of 16 counterfeit movie DVDs and music compact disks (CDs) from nine separate vendors at the Lee County Flea Market.

Deputy McCain and I purchased three movie DVDs from an unknown black male operating a booth labeled "B-1" for \$10.00. I observed numerous movie DVDs displayed at the booth. Additionally, I witnessed the unknown black male utilizing a DVD burner located at the booth to manufacture DVD movies.

Deputy McCain and I purchased three music Compact Disks (CDs) from an unknown black male operating a booth labeled "C-1" for \$10.00. I observed numerous music CDs displayed at the booth. The unknown male presented a business card bearing the name "Weaver Productions".

Deputy McCain and I purchased three movie DVDs from an unknown Hispanic female operating a booth labeled "C-12" for \$10.00. I observed numerous movie DVDs displayed at

the booth. Additionally, I witnessed the unknown Hispanic female retrieve movie DVDs from the trunk of a 1994 Oldsmobile Ninety Eight bearing Alabama registration 43C169Z.

Deputy McCain and I purchased one movie DVD from an unknown white female operating a booth labeled "C-28" for \$5.00. I observed numerous movie DVDs displayed at the booth.

Deputy McCain and I purchased one movie DVD from an unknown white female operating a booth labeled "C-36" for \$5.00. I observed numerous movie DVDs displayed at the booth.

Deputy McCain and I purchased two movie DVDs from an unknown black male operating booths labeled as "C-41", "C-42", "C-43" and "C-44" for \$10.00. The unknown black male stated that he was the nephew to an individual previously identified through surveillance as Elhadji Ka. The unknown black male also provided a business card bearing the name of "Elhadji Fashions". I observed numerous movie DVDs and music CDs displayed at the booths. Additionally, Deputy McCain and I purchased a pair of "Oakley" sunglasses from an unknown white female at booth "C-41" for \$8.00. I also observed numerous "Oakley", "Ray Ban" and "Dior" sunglasses displayed at the booth.

Deputy McCain and I purchased one DVD from an unknown black male and unknown black female operating a booth in the northeast area of the flea market. The DVD was purchased for \$3.00. The booth did not have any identifying numbers or marks but is described as having several tables covered by a green tent. The unknown black male stated that his name was "Will" and provided a

telephone number of (706)593-9411. I observed numerous DVDs and music CDs displayed at the booth.

Deputy McCain and I purchased one DVD from an unknown black female operating a booth located parallel and close to U.S. Highway 280. The DVD was purchased for \$5.00. The booth is described as several tables located in front of a Coachman Recreational Vehicle (RV). The Coachman RV did not bear any form of state vehicle registration. I also observed numerous DVDs displayed on the table.

Deputy McCain and I purchased one movie DVD from an unknown black male operating a booth located parallel and close to U.S. Highway 280. The DVD was purchased for \$5.00. The booth is described as several tables located in front of a 1996 Dodge Intrepid bearing Alabama registration 43G861S. I observed numerous DVDs and music CDs displayed at the booth.

On the same date, James Duff a field investigator for the Anti-Piracy Office (APO) of the Motion Picture Association of America (MPAA) examined the DVDs and CDs purchased by Deputy McCain and I and stated the items were in fact counterfeit.

On August 13, 2005, I purchased one movie DVD from an individual, later identified as Paulette FRANCIS, at the Lee County Flea Market. FRANCIS was operating a booth labeled "C-22". The DVD was purchased for \$5.00. I also observed numerous movie DVDs displayed at the booth.

On the same date, I observed all of the previously described individuals from July 30, 2005 operating booths in the same locations. I observed all of the individuals selling what appeared to be counterfeit movie DVDs and/or music CDs.

On August 15, 2005, James Duff examined the DVD I purchased from Paulette Francis and stated that the item was in fact counterfeit.

On October 8, 2005, I purchased one movie DVD from an unknown black male and black female operating a booth labeled "A-30". The unknown black male and unknown black female were the same individuals operating the booth described as tables covered by a green tent that Deputy McCain and I purchased a counterfeit movie DVD from on July 30, 2005. I purchased the movie DVD for \$3.00. I observed numerous movie DVDs and music CDs displayed at the booth. I also observed a DVD burner located at the booth.

On that same date, I observed the same individuals operating booths "B-1", "C-1", "C-12", "C-36", "C-41, 42, 43 and 44" that had previously been identified as selling counterfeit movie DVDs or music CDs on July 30, 2005. Additionally, I observed the same individual operating a booth located parallel to U.S. Highway 280, which was described as several tables located in front of a 1996 Dodge Intrepid bearing Alabama registration 43G861S. This individual was the same one that Deputy McCain and I purchased a counterfeit movie DVD from on July 30, 2005. I observed numerous movie DVDs and music CDs displayed at the booth.

James Duff, presented the following evidence to his ability to inspect and identify alleged counterfeit items.

He is a field investigator for the Anti-Piracy Office (APO) of the Motion Picture Association of America (MPAA) which includes member companies such as: Buena Vista Pictures Distribution, Inc. (which includes Disney Enterprises, Inc.); Metro-Goldwyn-Mayer Studios Inc.; Universal City Studios; Sony Pictures Entertainment Inc.

(which includes Columbia Pictures Inc.); Twentieth Century Fox Film Corp.; Warner Bros. Entertainment Inc.; and Paramount Pictures Corporation.

Prior to becoming a field investigator for the MPAA APO, Duff was a law enforcement officer for 30 years. Duff spent approximately 17 years as a Special Agent for ICE/U.S. Customs Service where he conducted investigations of counterfeit goods under Title 18 United States Code, Section 2320.

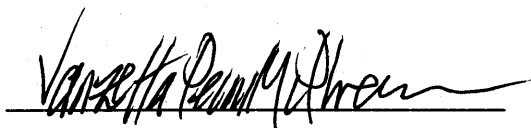
Based on the foregoing information, I believe that probable cause exists that counterfeit movie DVDs, music CDs, sunglasses and other goods are located at booths identified as "A-30", "B-1", "C-1", "C-12", "C-36", "C-41, 42, 43 and 44" and/or tables described as located parallel to U.S. Highway 280 in front of a 1996 Dodge Intrepid bearing Alabama registration 43G861S at the Lee County Flea Market Inc., Highway 280 south, Smiths Station, Alabama. Additionally, I believe that items used in manufacturing and selling the counterfeit goods, including but not limited to computer hardware and software, Digital Video Disk (DVD) burners, televisions, DVD players, as well as documents relating to the importation, purchase, possession, and sale of the above counterfeit goods are located at the listed booths and/or tables at the Lee County Flea Market Inc., Highway 280 south, Smiths Station, Alabama.



David E. Henderson, Special Agent

U.S. Immigration and Customs Enforcement

Sworn to before me and subscribed
in my presence this the 14th day of
October, 2005.



U.S. Magistrate Judge